

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF OREGON  
3 UNITED STATES OF AMERICA, )  
4 Plaintiff, )  
5 v. ) 6:10-cr-60066-HO-1-2

6:10-cr-60066-HO-1-2

TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE MICHAEL R. HOGAN

UNITED STATES DISTRICT COURT JUDGE, AND A JURY

TUESDAY, JUNE 12, 2012

14 DAY 1. PLAINTIFF OPENING STATEMENT - PAGES 1 - 51

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1 (Tuesday, June 12, 2012)

2 (Proceedings were had which were not  
3 transcribed or are bound under separate cover.)

4 (Lunch recess: 11:47 until 12:45 p.m.)

5 P R O C E E D I N G S

6 THE CLERK: Come to order. This court is again  
7 in session.

8 THE COURT: Mr. Papagni.

9 MR. PAPAGNI: Please the court, opposing  
10 counsel, colleagues, members of the jury, Judge Hogan  
11 told you before we broke for lunch, attorneys' comments  
12 is not evidence, and that's true. We don't give the law  
13 either. The law comes from the court. But you folks  
14 are going to be shown some things here in a second which  
15 are the charges that these two men face that the United  
16 States has alleged they have done.

17 The accusation is meaningless. The grand jury  
18 just indicted them. That's not evidence either. All  
19 the evidence will come from the witness stand. And as  
20 I'll be talking about for quite a while this afternoon,  
21 you'll get a little outline of the case, and that's all  
22 an opening statement is.

23 My job for about the next hour is to tell you  
24 why we think our evidence will prove to you beyond a  
25 reasonable doubt that they did what they are accused of.

1 And the defense lawyers are going to stand up and tell  
2 you why we won't be able to do that. Pretty simple  
3 process.

4 And then we'll get to the witnesses. So you  
5 are going to be sitting here for a week or two,  
6 hopefully not longer. And at the end of that you're  
7 going to be asked some questions. And I'll -- the way  
8 you answer your questions is you got to know what the  
9 charges are. So I'm going to ask Ms. Root to go ahead  
10 and put them up. Start with Number 1. There we go.

11 The first one is a conspiracy charge. The  
12 judge read to you the indictment. And I'm just going to  
13 go through these real quickly, it just helps my argument  
14 or my statement better for you.

15 A conspiracy is nothing more than an agreement,  
16 an agreement between two people to break the law. In  
17 this case, we have alleged that they've -- these two  
18 men, father and son, they've agreed to go ahead and  
19 intentionally and maliciously damage real or personal  
20 property owned by the United States. And the United  
21 States owns a lot of property. Some of Forest Service,  
22 some BLM, some Malheur Wildlife Refuge, U.S. Fish and  
23 Wildlife Service.

24 In this case, we're primarily concerned about  
25 the U.S. Fish and Wildlife Service as well as BLM, but

1 it doesn't much matter. The accusation, and that's all  
2 it is, is that they made an agreement to intentionally  
3 and maliciously damage it. That could be fences, that  
4 could be real property, it could be bitter brush that  
5 mule deer feed on. It could be all sorts of things.

6 We have Ms. Sgarlata here. And when it's her  
7 turn to go ahead and examine some witnesses, she's going  
8 to put some folks on the stand, they're going to talk  
9 about the damage aspect of the case. That probably  
10 won't be until next week. But that's going to be her  
11 job. And we have a few folks to talk to you about that.

12 So the conspiracy doesn't have to be just one  
13 crime. It can be separate. You got to decide them  
14 separately. But it has to be unanimous on each of them.  
15 But it can also be by means of fire that they willfully  
16 damaged or attempt to damage in excess of \$1,000. So  
17 it's a little bit of difference between the top one and  
18 the second one. Second one is we have to show you it's  
19 more than \$1,000 worth of damage to the government's  
20 property, United States' property.

21 Third one is little different, too. And you'll  
22 figure that out as we get into the case. Again, they  
23 intentionally, maliciously, but they damaged some  
24 property by means of fire. This is all about fire in  
25 this case. That they intentionally and maliciously

1 damaged or attempted to damage property that's used in  
2 interstate commerce or affecting interstate commerce.

3           Jump ahead a little bit. We're contending that  
4 when they lit some fire on U.S. property, burned over  
5 onto private property, the neighbor's property,  
6 Mr. Otley's property, and it burned up a big section of  
7 his property, and he'll come in here and he'll testify  
8 to you that he raises cattle, which is not pretty much  
9 unheard of, but he sells it in Nevada. And they do it  
10 over the video sometime. But that cattle goes across  
11 what? State lines. That's why we're saying that when  
12 he damaged Mr. Otley's property and Mr. Otley was  
13 selling his property over state lines that interstate  
14 commerce is involved.

15           Go to the next count. Thank you. Now, this  
16 count is -- gives you a date. And it kind of will help  
17 you get through this thing if you keep your dates in  
18 line. This goes back a long time. It goes back to  
19 September 30th of 2001. And these fires are given  
20 names, sometimes multiple names. It gets a little  
21 confusing. We anticipate you should listen carefully to  
22 that, because we're going to try to break it down by  
23 dates and locations, but it's alleged that there is a  
24 Hardie-Hammond arson. And this was a grazing allotment  
25 section. Talk about that in a moment. And Mr. Steven

1 Hammond, his father Dwight Hammond, and other persons  
2 directed by them, and that will become clear to you as I  
3 get into that particular fire, we'll talk about the  
4 witnesses we anticipate what the testimony is going to  
5 be, that more than just two of them here intentionally  
6 and maliciously damaged, destroyed, or attempted to  
7 damage or destroy by means of fire real and personal  
8 property owned by the United States. One count.

9 Go on to the next one, please, Ms. Root. Then  
10 we kind of jump ahead about five years to August 22nd of  
11 2006. And now it's the same thing. It's the same type  
12 of charge except it's a different location. It's also  
13 one of their grazing allotment areas. It's the Lower  
14 Bridge Creek area.

15 Go on to the next one, please. Next, same --  
16 different count, but now we say it's more than \$1,000.  
17 You can kind of see here in a second how it works  
18 together.

19 Lower Bridge Creek, this time we're saying the  
20 same amount of money, more than \$1,000.

21 Going on to the next one. Now we got another  
22 area, same date, although you are going to find out as  
23 we go through it in a second, that it's later at night.  
24 This one is called the Krumbo Butte arson. Make the  
25 same accusation against these people. The same

1 accusation is that they did it intentionally and  
2 maliciously.

3 Now, the defense attorneys are going to stand  
4 up and we anticipate that they're going to say, well, we  
5 had a right to do it or it was an accident or we may  
6 have been reckless or negligent, and they may offer  
7 evidence in that regard, and that's fine. And if you so  
8 find, then they're not guilty. You have to find them  
9 not guilty. But we're contending otherwise. So that's  
10 that count.

11 Let's go on to the next one. \$1,000 again.  
12 Same thing. So you can see very quickly that these  
13 fires, there's four of them to be concerned about, only  
14 the first one has one count, the other have two.

15 Go on to the next one, please. This one is  
16 different. This one is different. This one has a  
17 kicker, if you want to call it that. In this one we  
18 allege on August 23rd, the next day, it's referred to as  
19 the Granddad arson, that's going to be kind of  
20 confusing, but we're going to clear that up for you,  
21 along Bridge Creek Road that these two men intentionally  
22 and maliciously damaged and destroy, or attempted to  
23 damage or destroy by means of fire, real and personal  
24 property of the United States. This is the hook. This  
25 is the concern. This is going to be interesting to you.

1                   As a result of what they were doing, they  
2 directly and proximately created a substantial risk of  
3 injury to one or more persons, including, but not  
4 limited to, BLM employees and firefighters Chad Rott,  
5 Lisa Megargee, Lance Okeson and Joe Glascock. We'll  
6 talk about that probably a lot more.

7                   Next one, please. There is \$1,000 again.

8                   Next one. This tampering with witness charge,  
9 Number 9, that's a day after, that's August 24th. Some  
10 of you may know the Frenchglen Hotel. I think Judge  
11 asked you earlier today. And the accusation is that  
12 this BLM employee whose name I just read to you a moment  
13 ago, that he met up with Steve Hammond at the Frenchglen  
14 Hotel. And the accusation is Mr. Hammond when he met  
15 with Mr. Glascock he tried to intimidate him and  
16 threaten him and attempt to corrupt him, persuade  
17 Mr. Glascock not to report any lawful violations of the  
18 law, in other words not to tell law enforcement what  
19 Steven Hammond and his father had done the previous day.  
20 That's the accusation. Nothing more. Nothing more.  
21 Mr. Glascock will be taking the stand.

22                   So those are just the charges. So let's break  
23 down the fires. Now, in a second here what's going to  
24 pop up, I hope, is going to be a map, a big overall map,  
25 please, and it's going to be a separation of four fires.

1 Now this covers the period -- and you'll have it on your  
2 monitors -- but it should be blurry enough that you  
3 can't read all what I call bubbles, like cartoons, when  
4 you read cartoons it has the bubbles, you're not  
5 supposed to be able to read those yet, but what you're  
6 going to see is just an overall map of the vicinity that  
7 we're concerned about, which covers thousands of acres.

8               Okay. So this little burned area here, it's  
9 called the Hardie-Hammond fire in 2001. It's in black.  
10 We jump five years ahead and we have the Lower Bridge  
11 Creek Fire. And we'll talk about that because part of  
12 that fire was caused by lightning. There is no  
13 contention to the contrary.

14               The third fire is up to the north. That's  
15 Krumbo Butte Fire. We'll talk about that. That's fire  
16 number three.

17               And then there is a fourth fire, which is along  
18 Bridge Creek Road. You see a lot of little red marks  
19 there. And that's the one that we -- there's a  
20 contention that there were folks along that road and  
21 that Mr. Dwight Hammond and Steven Hammond here when  
22 they were lighting fires, put those people in harms'  
23 way. The law is more specific and we'll talk about  
24 that.

25               This is a general map. So let's talk about the

1 specific fires. Got to break them down for you. Before  
2 we go to the first fire, it's important that you know  
3 that in 1999, we're going to have Mr. Dyer testify. And  
4 we anticipate his testimony is going to be is he was the  
5 BLM district manager or ranger, he was the kind of top  
6 dog in the area. And he will testify that in September  
7 of 1999, one of the permittees, Mr. Steven Hammond, went  
8 ahead and he called up and wanted to burn on his  
9 property, which was fine, burn some sagebrush. And that  
10 was good. But he was told be careful. Don't burn on  
11 the public land. Well, it did.

12               Okay. It burned on the public land. Now,  
13 maybe 90 acres, it wasn't much, okay. And Mr. Dyer will  
14 testify that he asked Steven Hammond and Dwight Hammond,  
15 who's sitting next to him, and the mother who had owned  
16 the Hammond ranches, now Hammond ranch is a pretty good  
17 sized spread. Not supposed to ask a person how big  
18 their spread is but we'll anticipate that you'll find it  
19 was over 10,000 acres. And they have a lot of these  
20 grazing allotments, which are a lot more bigger and a  
21 lot more valuable.

22               Well, 1999, this little fire kind of spread  
23 over on to public land and Mr. Dyer asked them to come  
24 on in, and they did. Mr. Dyer asked Steve Hammond if,  
25 you know, he did this, if he burned it, and he said,

1 yeah, I did. And he was asked -- there was another BLM  
2 employee there, we anticipate the testimony will be --  
3 he was asked, well, did you try to stop it? No. Could  
4 you control it? Well, it wasn't controllable. Did you  
5 do anything to prevent it? No. So Mr. Dyer gave him a  
6 tongue lashing. He said, don't be doing that in the  
7 future, we'll anticipate the testimony will be. And he  
8 said, you can't do that. And if you want to burn your  
9 grazing allotments, we have a program you have to go  
10 through. You have to agree with us. It's called a  
11 prescribed burn agreement. And you have a range con  
12 that you can work through.

13 Now, for those of you who don't know, we  
14 anticipate the testimony will be that at the time the  
15 range con or the rangeland specialist, they got these  
16 nice names, whose specialization is to work with a  
17 permittee to help them get their grazing for their cows,  
18 the AUM's. I don't pretend to tell you what that means,  
19 but we're going to have someone here that will. And you  
20 work together. You know, and you want your AUM's to go  
21 ahead and move your cows so they get fed good and more  
22 pounds means more money. And so Mr. Ward was their  
23 range con.

24 So Mr. Dyer said to the Hammond family who were  
25 all sitting there, look, if you want to burn it, let's

1 do a prescribed burn agreement. Now, you can do what  
2 you want on your property because that's private  
3 property, but public property, we got all this red tape  
4 and regulations you get to go through. Okay. But we  
5 got to go through it because it's public property. You  
6 don't own it. You have a grazing lease on it. So  
7 Mr. Dyer tells him that, and his dad, and his mom.

8 And after they are through saying that,  
9 Mr. Dyer, we anticipate will testify, and he'll testify  
10 this afternoon, that after he said we can do this  
11 agreement, if you want to do it, do it with Dave Ward.  
12 But then comes the warning. Then comes the warning.  
13 Don't do it again. If you do, there'll be legal  
14 consequences. It could be nothing but a fire trespass,  
15 a little fine. It might be a prosecution for  
16 suppression activities. It wasn't much discussion. But  
17 if you intentionally set fires, that could be more.

18 And then Mr. Dyer does what? Well, this is  
19 BLM. He does nothing. There's no fine. There is  
20 nothing. The case is closed. That's 1999.

21 That sets the stage for why you folks are here,  
22 because now we jump ahead two years. Two years later,  
23 it's public land, we have people that like to hunt. And  
24 we anticipate the testimony from Gordon Choate, maybe  
25 this afternoon, is that Mr. Choate grew up in Burns. He

1 was a hunter. He loves to hunt. He knows all about  
2 hunting. And he was retained by a guide service to  
3 guide a couple -- a father and son, and they'll testify,  
4 too, Dennis and Dustin Nelson. Dustin had just gotten  
5 off his Mormon mission. His dad lives in Utah. Dad is  
6 a construction guy. Let's bring my son out here. We'll  
7 go hunting and get a good mule deer, you know, get a  
8 good buck.

9 So Gordon Choate goes ahead. And he goes out  
10 in the public land here. Now, we've got these maps.  
11 You're going to be seeing a lot of maps, folks. We got  
12 these maps. This is Number 2. Defense counsel, if you  
13 can't see it there, it's Number 2. Number 2, the  
14 Hardie-Hammond fire. Remember we talked about it. We  
15 have -- we'll show you a lot of photographs. Just as a  
16 footnote, we anticipate the testimony will be when you  
17 see the numbers Exhibit 10 and these little white  
18 things, or you'll see exhibits underneath them, the  
19 reason why we do that is if these photos come into  
20 evidence, which we think they will through the  
21 witnesses, and maybe a week from now you forgot where  
22 Exhibit Number 126 the photograph was taken, just look  
23 at the map, and this one says Exhibit Number 7, you look  
24 at Exhibit Number 7, and you'll know exactly where it  
25 was taken and when.

1                   So Mr. Choate sets up a camp. He's getting  
2 paid \$1,000 for this trip. Dusty and Dustin Nelson,  
3 they come out, father-and-son trip, it's going to be a  
4 great time. And so we'll get Mr. Choate up here. They  
5 come out, he sets up his camp, and it's near Hammond  
6 ranch property. You'll see it here. Hammond ranch  
7 property here, Hammond ranch property here. And they  
8 come out. And the first day of hunting season, they go  
9 out and they see some bucks, but they're not really, you  
10 know, we can do better, so they wait until  
11 September 30th, the morning of September 30th. They get  
12 up about -- before -- it's still dark out. And he parks  
13 his truck -- Mr. Choate parks his truck along the road  
14 here. And they walk out into the public section,  
15 section 15, and they go ahead and they wait, and the  
16 young man makes a single shot and gets himself a real  
17 nice buck.

18                  The man on the right is Gordon Choate. He's  
19 going to be your witness. Dustin is the young man on  
20 the -- to be to your left. And there is the buck. His  
21 dad, too, was there. He'll testify this afternoon.

22                  So if you look at the sky, it's just a gorgeous  
23 sky. There ain't any clouds or lightning anywhere. And  
24 that will come up later.

25                  So they get their buck. And it's a happy day.

1       Mr. Choate moves his pickup down the road so it'd be  
2       closer to drag the buck to. And while he's parked  
3       there, he sees coming down the road from the east, we  
4       anticipate the testimony will be, is a pickup. And in  
5       that pickup is Dwight Hammond. And Dwight Hammond talks  
6       to Mr. Choate. And we anticipate the testimony will be  
7       that Mr. Dwight Hammond asks, well, how's your hunting  
8       going? or something to that effect. And one of his  
9       passengers makes a smart-aleck comment. They got a good  
10      one, but uses a little different language.

11           And Mr. Dwight Hammond asks these guys where  
12      they're camped. And Mr. Choate knows Mr. Dwight  
13      Hammond. Had met him once before. And Mr. Choate, we  
14      anticipate, will testify that he was pretty cautious  
15      when he said where they were camped. He just kind of  
16      waved out over here, waved his arm up Bridge Creek Road.  
17      Didn't say much more.

18           Next thing Mr. Dwight Hammond says, well, we  
19      have a couple of guys, meaning hunters, coming over the  
20      hill. Okay. Fine. So Mr. Choate starts to get his  
21      deer going down the road. Mr. Dwight Hammond heads off  
22      toward the west. And that's pretty much it.

23           And as they're going down the road with their  
24      buck, young man, his dad, Mr. Choate see a group of  
25      deer, nice deer, coming across the ridge and go down

1 under the road and come back up on the other side. They  
2 get out their binocs and they stop and it's really a  
3 pretty site.

4 Well, it was, and all of sudden the shots rang  
5 out, about 10, 12 shots. And all of a sudden, these  
6 deer -- they see some pelt flashing, one leg flopping.  
7 And they look over to the right. And Mr. Dusty Hammond  
8 (sic) sees one man kind of shooting wearing a white  
9 cowboy hat, white cowboy hat. And so they see that, and  
10 the anticipated testimony will be, that Mr. Choate  
11 decides it's kind of time to leave, and so they turn  
12 around, and as they're heading back, they look back and  
13 they see there's four people up there. That will become  
14 important to you folks later, four folks.

15 And they drive back to their camp. Now, when  
16 they're driving back to their camp, keep in mind that  
17 Dwight Hammond, his property is nearby, when he's  
18 talking with Mr. Choate, we anticipate his testimony  
19 will be that Mr. Dwight Hammond did not tell Mr. Choate  
20 these two people, by the way, we're going to do a  
21 controlled burn today. We're going to start some fire  
22 on our property this Sunday, you know. Even though my  
23 group of folks here are hunting, we're going to do a  
24 controlled burn because we got this sagebrush and  
25 unwanted vegetation, so we're going to light up our

1 property. We might want to tell you that. Well, he  
2 didn't. Mr. Choate will say he was never told that.

3 But they get back to their camp, and we  
4 anticipate the testimony will be that around 10 o'clock,  
5 when Mr. Choate is dressing down the buck, smoke comes  
6 into the camp. 10 o'clock. Plus or minus 15,

7 20 minutes, not too long after the deer were shot.

8 Mr. Choate has a reason to be upset. He has a first  
9 obligation to get these father and son out of there. So  
10 he packs up the deer. And they travel up this road,  
11 which is called Bridge Creek, they go clear around to  
12 Moon Hill, also called McCoy Ridge, they go by different  
13 names. And they take them clear down to base camp where  
14 the Nelsons are at.

15 Dennis Nelson will testify that they were  
16 heading back to Utah. And the buck was loaded up. And  
17 he thought it was right around noontime that they were  
18 already back at their truck there. Okay? That becomes  
19 important.

20 I have this blocked out here. That's where he  
21 observed the deer when he was hunting. It becomes  
22 important because what happens next is Mr. Choate goes  
23 back to his camp. He's got \$1,000 in camping gear. And  
24 as he's going back, he stops along the roadway, and he  
25 takes photographs right around noontime, a little bit

1 after noon. And you're going to see those photos of the  
2 fire. And you can tell -- section is what? About a  
3 mile? So it's about three miles away. Choate takes the  
4 photos. The only photographs you're going to see. Not  
5 from any law enforcement people, just this hunting  
6 guide.

7 He gets back to his camp, takes him a long time  
8 because he's concerned about where the -- that fire's  
9 going to come through his camp. Smoke's blowing right  
10 through it. It's black. He gets back about 5 o'clock,  
11 6 o'clock, and he calls for a game cop. Because after  
12 he saw the guy in the white hat shoot his deer, the guy  
13 in the white hat comes down the ridge and hides behind  
14 some sagebrush.

15 Mr. Choate will testify that when Dustin Nelson  
16 got his buck, they tagged the buck. You need a license.  
17 This is public land, not landlord land, where the deer  
18 were at. So Mr. Choate stays in his camp, calls for a  
19 game cop. Next day, a game cop comes out about 9  
20 o'clock. Two of them, one with U.S. Fish and Wildlife  
21 Service and one with the Oregon State Police. They come  
22 out. Mr. Choate feeds them breakfast. It's 9 o'clock.  
23 Takes them to the location where the deer was shot.  
24 There is no blood trail, nothing there. Of course,  
25 Gordon will tell you that as an experienced hunter, he

1 knew that the blood after a while with smoke and time,  
2 turns kind of black or dirty looking, but he'll tell you  
3 about that. They couldn't find any evidence of the deer  
4 being hit. No dead deer.

5 They kind of walked around but they couldn't  
6 see much because it was -- smoke was burning through the  
7 area. And we anticipate what will be said is that while  
8 he was standing there up on the hill where the deer was  
9 shot, he sees the same pickup that he saw Mr. Dwight  
10 Hammond in, and he sees someone wearing a white cowboy  
11 hat go down in front of him. And he's just standing  
12 there. So he's made his complaint. And he's talked  
13 about what will happen. And so there is an  
14 investigation.

15 The investigation, they finally get a BLM  
16 officer into the case about a month later. And they  
17 investigate it. And Dave Ward, the game range con, he  
18 had no notice that they were going to do this burn, he  
19 gets up there and he notices right along the fence line,  
20 138, 139 acres burned. Not a whole lot, but it has to  
21 fence off this little section for a couple of growing  
22 seasons. So it's only about 400 bucks, plus whatever it  
23 costs to suppress it, whatever it was -- there were no  
24 suppression costs. It wasn't a very expensive fire.

25 But it meant a lot to Mr. Choate and father and

1 son. So the government gets involved in this. And we  
2 go ask Mr. Steve Hammond, Dave Ward takes him out near  
3 Blitzen Road Creek a few weeks later. And he asks  
4 Mr. Hammond about the fire. Mr. Hammond says he didn't  
5 know anything about it. He didn't light the match.  
6 Okay. Well, this LEO wants to talk to you. Well, I'm  
7 not going to just get a ticket. He'll have to come and  
8 see me somehow. I'm not going into Burns just to get a  
9 ticket. Okay. That's fair.

10 So what happens is that Mr. Ward arranges for  
11 this law enforcement officer, Agent Shrader, to talk to  
12 Mr. Hammond. And there is a phone conversation before  
13 that. Mr. Hammond says, ask me specific questions.  
14 Mr. Shrader does. And the answers are: No, I didn't do  
15 it. No Hammond ranch was involved. No.

16 And then as the questions are being asked of  
17 him, he said, well, I did start a fire October 1st in  
18 section 25, which is along his property. But that's not  
19 where the fire was. That didn't make much sense.

20 Then Dave Ward mentions that there was a deer  
21 slaughter, some deer were shot. Mr. Steven Hammond gets  
22 very agitated at Dave Ward, his range con. Dave, why  
23 didn't you tell me, he says. Well, Dave didn't know  
24 they were going to be out there lighting the fire. He  
25 didn't think of it. But when that happened, something

1 else occurs.

2 At this point, the government, everybody says  
3 case over, we can't prove it, end of case, no charge.  
4 Just Gordon Choate's word. So the years pass.

5 2001 goes into 2002. In 2002, in June, Mr.  
6 Steve Hammond writes a letter to Mr. Dyer. It's a long  
7 letter. It's six pages, single spaced. He says, Dave  
8 Ward isn't communicating well. Dave Ward doesn't do  
9 this. Dave Ward doesn't do that. And at the end of the  
10 letter, he says I don't want Dave Ward as my range con  
11 unless you have another employee.

12 He also says in the letter, about midway  
13 through it when it's talking about the slaughtering  
14 incident, Dave Ward didn't tell me about that and I was  
15 not there. That's what he wrote in the letter he  
16 signed. I was not there. Okay. That's 2002.

17 2003, we get a new person in BLM, management  
18 cycles through. What happens is a gal comes in, little  
19 gal, and she's a by-the-book type person. Her name is  
20 Karla Bird. We anticipate her testimony will be that  
21 she wanted to meet the Hammonds. She goes out to the  
22 Hammond ranch with the new range con, Cam Swisher. And  
23 they go out and they meet the mother, who's co-owner of  
24 the ranch, Susie Hammond. Good note taker by all  
25 accounts. And we anticipate what will happen is that

1 while they're looking at their grazing allotment map,  
2 according to Karla Bird's sworn testimony, we  
3 anticipate, is that Steve Hammond starts waving at the  
4 map and says, I set this fire. I set this fire. I set  
5 this fire. I set this fire. And you guys didn't catch  
6 me.

7 She wrote that down. That was her first  
8 meeting with the guy. But nothing happens. You can say  
9 whatever you want in this country, you gotta prove it.

10 So 2003 passes and now we go to 2005. Now,  
11 there's some fires up there in 2005. And there is no  
12 claim from the government's side of the table that the  
13 Hammonds were responsible for that. Could have been  
14 lightning. But whatever the cause of it, there was  
15 fires, and those fires become important because they're  
16 the anchor points from the 2006 fire. And you'll learn  
17 what anchor points are from Lance Okeson.

18 Nothing on 2004. So in 2005, we have Ms. Bird,  
19 she gets a call from Steve Hammond who says I don't want  
20 a firefighter's footprint on our property.

21 MR. BLACKMAN: Objection.

22 MR. MATASAR: Objection, Your Honor. I believe  
23 there was a pretrial ruling on this matter.

24 THE COURT: Sustained.

25 MR. PAPAGNI: What I'm referring to is he calls

1 her and says I don't want any firefighters put on the  
2 property.

3 THE COURT: Go on to the next matter, please.

4 MR. PAPAGNI: So what happens is she takes that  
5 and she works out a plan trying to say that we won't do  
6 that. Okay. And that becomes important because as  
7 you'll find out, we have a young man named Chad Rott who  
8 becomes a BLM firefighter. In 2005 he's making a run  
9 trying to get out to the public land to put out the fire  
10 and he makes a wrong turn. And that goes on to Hammond  
11 property. Now, he's got his little crew with him. Chad  
12 is a young man. And when he does that, this pickup  
13 follows him and pulls him over. And the person in the  
14 pickup is Steve Hammond.

15 And he remembers that because he got -- well,  
16 he'll tell you how he got chewed out in front of his  
17 crew, but he never forgot it. So because he went onto  
18 that property like that, Karla Bird gets this phone  
19 call, we don't want the firefighters on the property.

20 MR. BLACKMAN: Objection.

21 MR. MATASAR: Same objection, Your Honor.

22 THE COURT: Sustained.

23 MR. PAPAGNI: So Chad Rott at that point, he  
24 goes ahead and he fights this fire. The fire is fought.  
25 After the fire is out, a couple days later, Steve

1 Hammond goes up and he tells his neighbor, Bill Otley,  
2 you know, I was starting some fire up there. Bill, I  
3 can't remember the location. It just happened to get  
4 through the fence line and burned about 20 acres.

5 And Bill Otley says that's okay. It's nothing  
6 big. Thank you for telling me.

7 That's pretty much the end of the 2005 fire.  
8 But then comes 2006. And in 2006, Steve Hammond goes  
9 and tells the sheriff of Harney County, he wants to know  
10 if he can prosecute BLM firefighters if they trespass --

11 MR. BLACKMAN: Objection.

12 MR. PAPAGNI: He wants to know if he can  
13 prosecute them, and --

14 THE COURT: Overruled.

15 MR. PAPAGNI: -- the sheriff goes ahead and has  
16 a conversation about that.

17 Now, the sheriff of Harney County has known  
18 Mr. Dwight Hammond since 1967. The sheriff Dave Glerup.  
19 So after Steve Hammond talks to them, he then calls up  
20 Karla Bird. And he wants to know how soon the allotment  
21 will be burned in the area. And she says, well, you  
22 know, I don't know. And he says, well, that's not soon  
23 enough.

24 And then we anticipate the testimony will be is  
25 that after that on August 17th, Steve Hammond is doing a

1 fencing project with his new ranch con, this one's name  
2 is Joe Glascock. It's August 17th. And while they're  
3 doing the fencing, Mr. Glascock hears Mr. Hammond say,  
4 well, you know -- Mr. Glascock by the way was commenting  
5 on how good the land looks because it was burned --  
6 says, you know, my dad and I been setting fires for  
7 years. You know, and we just kind of drop matches in a  
8 straight line here. And don't be surprised at the next  
9 lightning storm if there's fire here at Bridge Creek.

10 Mr. Glascock hears that on the 17th of August.  
11 On the 21st of August, he reports it to the law  
12 enforcement officer, George Orr, says this is what I was  
13 told.

14 On the 21st of August, there is a lightning  
15 storm. And it's a doozy. There's lightning all over  
16 the place. You'll see a map with an expert named Holle  
17 who's going to testify how we have sensors that can tell  
18 you pretty close to where these lightning bolts hit and  
19 the damage they did. And he's going to talk about how  
20 that lightning was from about 3 o'clock, 3:20 on the  
21 21st all the way until about, oh, 6:20, 6:30 on the  
22 21st. Okay. And there is a fire in the Lower Bridge  
23 Creek area.

24 Joe Glascock is sent out there from Burns. He  
25 comes out there, he sees the Hammond pickup and horse

1 trailer. He gets out to the side. And he gets in his  
2 four-wheeler, and he goes around the entire burn site.  
3 You can see -- this is Exhibit 32, gentlemen. Goes  
4 around the entire burn site. And by 10:30, he sees that  
5 the entire fire was caused -- see the lightning strikes  
6 here, 8/21 at 6:10:41 p.m., peak, a negative 16.9.

7 So he goes around here, sees a little burning  
8 on the inside, but the perimeter is completely out. And  
9 he bumps into Dwight Hammond about 10:30. And tells  
10 him, you know, that's how many acres, I don't know, 20  
11 whatever thousand, whatever acres, and Dwight Hammond's  
12 comment to Joe Glascock at that moment is, well, too bad  
13 it wasn't bigger.

14 Joe Glascock then leaves the area because there  
15 is another fire burning, another lightning on Mormon  
16 Place, I think the testimony will be, I anticipate. But  
17 as he leaves, then he hears something. Couple of things  
18 happen.

19 First, an air attack guy who is overhead, his  
20 name is Lambert, and we anticipate that Lambert is going  
21 to testify that he was noticing there was something  
22 going on that was suspicious to him.

23 Now, an air attack pilot is the guy that's up  
24 in the airplane. And they're looking at the fire from  
25 the sky. And they are trying to do suppression

1 techniques. And he notices about this location -- now,  
2 keep in mind that they are flying, longitude and  
3 latitude are -- there's going to be some room for error.  
4 But at 12:15 he notices in that location a fire, which  
5 is outside the perimeter Joe Glascock said it was at.

6 And about the same time, we have a gal who was  
7 working up on the wildlife refuge, her and her husband,  
8 they are volunteers, and they're at the gauging station,  
9 and they see a tall man come out of the smoke. He looks  
10 pretty exhausted. He's walking toward the direction of  
11 the Hammond pickup and horse trailer. And they're  
12 there. And she hollers out to him, you okay? Do you  
13 need a ride? The man turns around and walks back into  
14 the smoke.

15 Joe Glascock comes back -- he's sent back here,  
16 he comes back here, and he goes down the road, and he  
17 talks to Steven Hammond's kids for a second, and then he  
18 gets to Steven Hammond. Steven Hammond he meets at  
19 about 1 o'clock. And as he's coming over the -- coming  
20 toward the area, he's seeing these fire columns outside  
21 his perimeter that he thought was out on the other side  
22 of Bridge Creek. Little gully. Outside of that. He  
23 also sees it to the west.

24 And as he sees Steve Hammond, Steve Hammond's  
25 walking along or driving or on horseback, excuse me,

1 he's taking Dwight's horse and Dwight is afoot. And at  
2 that point, Joe starts talking to Steve. And Steve  
3 says, wow, that fire really took off. And as he says  
4 that, Mr. Glascock's looking over Steve's shoulder, and  
5 sees these columns of smoke and fire start to take off.

6 So Mr. Glascock then goes ahead and he's now  
7 moving around trying to get ahead of the fire so he can  
8 report where it's at. And we anticipate he'll testify  
9 to you all about it. That's Mr. Glascock up on the  
10 screen. I think he has a beard now.

11 The next thing that occurs is after that fire  
12 is going, that fire takes off. And you can see from the  
13 map, the big map, which he got here was an entire area,  
14 this is a satellite imagery area. Now, keep in mind  
15 this will be -- kind of broke it down into colors for  
16 you, separate the maps -- the fires, excuse me. And  
17 what you got in this area here, you can see the little  
18 outline Mr. Glascock drove before the fires took off,  
19 Mr. Steve Hammond said, we anticipate the testimony will  
20 be, the fire starts going.

21 Resources are allocated down there. It's a bad  
22 fire season. Resources are allocated there. And  
23 Mr. Glascock was sent to Antelope Creek. Now, he does  
24 some communication with firefighters, bringing people  
25 in. Also got Lance Okeson who comes into it. At any

1 rate, they end up going up through what's called  
2 Antelope Reservoir about 7 o'clock that night.

3 And they start doing what's called black line  
4 along Bridge Creek. And they do that because -- this  
5 dark area that you can see on your monitors, that's the  
6 2005 fire that burned away the fuel. And by burning  
7 away that fuel, that's a safe zone because a forest fire  
8 has to have heat, air, and fuel. So Mr. Okeson, who's  
9 calling the shots, he's the line safety officer, he's  
10 putting this black line, in other words, he's going to  
11 burn the fuel up in front of this if he can so that if  
12 the fire gets as far to the juniper belt, it'll stop the  
13 fire. That's the tactic. Mr. Lance Okeson will talk a  
14 lot about that.

15 So Joe Glascock and Lance Okeson are up at  
16 Antelope Reservoir. It's about 7 o'clock at night. And  
17 they see a Super Cup go overhead. And they look up and  
18 they see Mr. Dwight Hammond and Steve Hammond, and Steve  
19 Hammond is recognized only by Joe Glascock. Lance  
20 Okeson can't say he saw both men. He knew Dwight, Lance  
21 Okeson did. They see that plane go overhead and then it  
22 heads back, circles -- you know, it goes back. So the  
23 two men are out doing a black line until around 10:00,  
24 10:30 at night. Meanwhile, we changed locations.  
25 Remember I said there is four fires? And I told you

1 it'd take a while. This is fire number three.

2 Lance Okeson was asking for some help from  
3 engines. He wanted some folks to come and try to help  
4 him. And so there were some young firefighters on three  
5 engines. And they were trying to get where Okeson was,  
6 but they didn't do a very good job. It was late at  
7 night. So as they were driving back by Moon Hill Road,  
8 as they are going back up the road, one of the captains  
9 was a young man named Hussey, he blows a tire at the  
10 back end of a dual -- a second tire in the back. And  
11 he's got to change it. So while he's changing it, the  
12 other young man who's a guy named Dunten -- do we have  
13 his photo? There it is. That's Mr. Dunten. And he  
14 goes out here, drives out here, and he goes to the ridge  
15 there, and he looks over the ridge to see what the fire  
16 is doing.

17 Now, when he first goes out there, he sees it's  
18 kind of skunking down and it's not timed. The RH's are  
19 high. It's just kind of smoldering, it's doing nothing.  
20 And he's not too concerned about it. Again, there was a  
21 fire in the Krumbo area, so more than likely lightning  
22 strikes started the fire, but it was doing nothing. So  
23 he goes back and about an hour later, he comes back to  
24 check on it again. Still can't move. And when he comes  
25 back this time to the ridge, he notices something. He

1 notices that this fire is still skunking around here, as  
2 the term is used. In other words, it's doing nothing  
3 but smoldering, but there is three spot fires in a line  
4 right below the ridge. And he's looking down at it.

5 And nowadays, we don't always take cameras but  
6 we have cell phones and he takes a cell phone picture,  
7 because he can't figure it out. He's been trained to  
8 fire fight but the wind is going the wrong way. It's  
9 not right. It bothers him.

10 Now, this butte's in the way here, so he can't  
11 see beyond that butte. And you'll see photos. We have  
12 a bunch of them. And he looks down, and it bothers him,  
13 so he goes back to Mr. Hussey and he tells Mr. Hussey,  
14 he'll testify to this, he says someone's lighting down  
15 below us.

16 Mr. Hussey, next morning when Lance Okeson  
17 comes, he gets more slash fuel for their backfire, is  
18 told that someone is lighting them below them. He looks  
19 at the photo on the cell phone. He goes to the ridge.  
20 He's upset. Mr. Okeson then leaves and goes back to do  
21 his work on Bridge Creek Road.

22 We're going to hold that up for just a second  
23 because I have to jump ahead in my testimony. What  
24 happens is after the fires were out, fire cause  
25 investigator comes back out to the scene in September,

1       August or September time, that's September 3rd, I think.  
2       Anyway, he comes back out here and he starts taking  
3       these photographs and does his analysis and the only  
4       place he can say there was an incendiary fire was right  
5       here which says area of origin and J Bird, which is on  
6       Hammond property. That's the only area.

7                  He did not say there were three fires up here  
8       that Mr. Dunten saw. And Mr. Dunten did not keep his  
9       photograph on his cell phone so there's no photo for you  
10      to look at. But he did do a diagram. And he will  
11      testify and he is a witness.

12                 So the expert says that's where the fire was  
13       at. Now, we anticipate there might be a defense saying  
14       that Mr. Hammond was up there and we'll talk to you  
15       about that defense in a few moments after we talk about  
16       Mr. Lance Okeson. What happens is this fire that  
17       Mr. Dunten was talking about, he saw it, it was about 10  
18       o'clock at night. And Mr. Glascock, when he was out  
19       here at Lower Bridge Creek, that was in the morning.  
20       Well, now we're talking about August 23rd, the morning  
21       of August 23rd.

22                 And up in the air is an air attack pilot named  
23       Joe Bates. And he's been doing this for years and years  
24       and years. He'll tell you all about that. And he's up  
25       there and he's calling retardant drop, and he's looking

1 at this fire from yesterday. And he's looking at where  
2 the fire line is at. You see it right along through  
3 here (indicating). And he will testify that at about  
4 10 o'clock in the morning that fire that he was in  
5 charge of trying to drop retardant on, this is the line.  
6 And as he's flying up this line, he looks off to the  
7 east about two, three miles at a little bridge -- Big  
8 Bridge Creek, creek area, he sees fire starts, two,  
9 three miles away.

10 And he tells his pilot, you know, let's go over  
11 there. We anticipate he'll testify that in all the  
12 years and experience he's never seen that. That's the  
13 first time.

14 So as he's heading over there, what we know is  
15 Lance Okeson and Joe Glascock, they didn't get very far  
16 with their black line. They got back down to a 2000 --  
17 where there is a juniper cut. So from a 2005 fire to  
18 where the juniper cut, they burned a black line. They  
19 had a little bit of slop-over but they made sure that  
20 was out. They made extra sure that was out because  
21 they're asking for an engine to come help them. And the  
22 engine was being driven by Chad Rott. And Lisa Megargee  
23 was in it. That's Chad. And that's Lisa.

24 So they are coming down Bridge Creek Road. And  
25 as they are coming down Bridge Creek Road, they are told

1       they're looking for slop-over, which means any fire that  
2       was on the east side of the road not the west where the  
3       black line is, and their job is to make sure it is out,  
4       and it is, according to them.

5                 And as they are going down the road, they are  
6       also told there is a juniper across the road, a juniper  
7       tree. Apparently the night before a juniper had fallen  
8       down after the back burn, so it was across the road.  
9       And they were going to cut that out so they'd have a  
10      good -- you know, that road would be clear. It had been  
11      freshly bladed. Be clear so they could go ahead and  
12      have an escape route if they needed it.

13               So while Chad Rott and Lisa were there, Chad  
14      parked his engine, he gets out, gets out his chainsaw.  
15      And as he's doing that, we anticipate the testimony will  
16      be, is that a blue pickup came up behind him. And he  
17      look backed at it, and the driver of the blue pickup was  
18      Steven Hammond. And he remembers Steven Hammond from  
19      the year before. No doubt. And Steven Hammond gets out  
20      of the pickup. And he had a passenger, an older man.  
21      Chad didn't initially know who he was, will be the  
22      testimony.

23               And Steven Hammond comes up and asks Chad how  
24      long it's going to take? And Chad says as long as it  
25      takes me to cut it up into the chainsaw. Steven Hammond

1 then goes back to his pickup. Doesn't offer to help.  
2 That's okay. And goes ahead, backs his pickup about a  
3 100 yards and then guns it, and goes up the side of the  
4 hill there that's already been burned, back burned,  
5 bouncing over rock and whatever. You'll see the photos.  
6 And gets around them. And then takes off down the road.

7 Chad finishes cutting up the tree. And as he's  
8 finishing cutting up the tree, Chad radios ahead to  
9 Lance Okeson and says Steve Hammond is coming your way.  
10 Then Chad and Lisa start driving down Bridge Creek Road.

11 As they start to drive down Bridge Creek Road,  
12 they see fire. And they see it only on the east side of  
13 the road. Only on the left. A short distance. And the  
14 first fire is too big for them to put out. And it  
15 doesn't make any sense. It was a black line.

16 And they keep driving. And as they're driving,  
17 they only see more of these fires on the east side.  
18 Chad gets a little panicky. He tells Lance, Lance  
19 Okeson. Tells him, says come on down and put out the  
20 test area. About the time these phone calls are going  
21 on, the chronology will become important as the case  
22 goes through it, Steve Hammond pulls up to Lance  
23 Okeson's location and Joe Glascock, test fire, which is  
24 the very bottom where the burn was in 2005, but he's by  
25 himself. Dwight is not there. Not in the pickup.

1           Later, Chad Rott looks at some photos and picks  
2 out the passenger to be Dwight Hammond. But when Steve  
3 pulls up in his blue pickup, which has got these Les  
4 Schwab TXR tires, they looked pretty new, Joe Glascock  
5 notices that, he'll testify about that. What happens is  
6 is Joe Glascock, we anticipate, does the Harney County  
7 howdy-do, good morning, how you doing, Steve?

8           And the fire here is still two, three miles to  
9 the west. But Lance Okeson doesn't do that. Lance  
10 comes up, sticks his head in, and says, what are you  
11 doing lighting underneath those guys last night -- below  
12 my guys last night, referring to Krumbo.

13           Steve Hammond says, you know, I was just taking  
14 care of my -- backfiring and taking my winter feed.  
15 Lance gets angry, says don't you be doing that. You  
16 give us a call. You gotta be telling us before you be  
17 doing that. Steve Hammond says, well, maybe you guys  
18 better clear out. And Lance Okeson says, not likely.  
19 We're not going to. We got a job to do. Steve Hammond  
20 says, I gotta go open some gates, and off he drives.

21           There was no mention, Lance Okeson will  
22 testify, that Dwight Hammond was doing anything. There  
23 was no mention even that Dwight Hammond was there.  
24 There was no suggestion at that point that Steve Hammond  
25 had someone else out there. But what happens is, is

1 Lance Okeson tells Joe, you know, go ahead and go back  
2 up Bridge Creek and tell the fence contractors to  
3 evacuate. Because all of a sudden there is fire on the  
4 wrong side of the road. And Lance can't figure that  
5 out. And he's an experienced firefighter. Where is  
6 Lance?

7 So what he does is he gets on his ATV, his  
8 four-wheeler, and he goes to a high spot on the road, we  
9 anticipate the testimony will be. And when he gets to  
10 the high spot on the road, he looks out in the distance,  
11 and you can see for miles. Good vantage point. And  
12 he's thinking he's seeing these fires all on the type --  
13 it's to the right, it's two, three miles from the main  
14 fire. And there is no lightning. Now, the winds are  
15 coming up. They are going to be a bad wind about 1  
16 o'clock, but this is still 10:00, 10:30 in the morning.  
17 The winds are picking up.

18 And he's looking and he's looking and all of a  
19 sudden he sees movement to his right. And then he sees  
20 some puffy white smoke coming up. A recently set fire  
21 is what he'll testify to based upon his experience. And  
22 who does he see? Dwight Hammond walking away from a  
23 recently set fire. He sees him.

24 And because, as I told you earlier, we  
25 anticipate Lance Okeson will tell you, testify, that

1 he's a Burns boy, and he has seen Dwight Hammond, he  
2 knew who Dwight Hammond was. He sees Dwight Hammond  
3 walking away from that puffing Charlie Brown juniper  
4 tree, it's on the grass going up, and it's starting to  
5 burn black, he yelled out, Dwight, Dwight, stop. That's  
6 going to be the testimony from Lance Okeson.

7 And at that point, Dwight Hammond is just going  
8 across the road. And Dwight Hammond does not stop. He  
9 goes across. He's heading toward the west, toward  
10 Hammond property. Lance guns his four-wheeler, gets  
11 down to the spot, gets off his ATV and begins to pursue.

12 And kind of a funny moment, he gets off his  
13 ATV, takes about four steps after Dwight and he tumbles  
14 because it's rocky territory, and he fouls up his ankle  
15 a little bit. He gets up and he still goes after  
16 Dwight. And we anticipate the testimony will be that he  
17 catches up with Dwight somewhere right in this area  
18 (indicating).

19 And when he catches up with him, he says,  
20 Dwight, I know it's you, and that's when he stops behind  
21 a juniper.

22 Now, at this point we anticipate the testimony  
23 will be that Lance Okeson is trying to get a law  
24 enforcement -- trying to get assistance, trying to go  
25 ahead and get someone out there to help him. Because

1 he's a firefighter. He's not a cop. But he confronts  
2 Dwight Hammond, and he says, you know, don't be doing  
3 this, you are lighting us in. What about the kids?  
4 Don't you care -- he just -- and you'll hear it, it  
5 won't be from me, you'll hear it from Lance Okeson.

6 And when Dwight Hammond is talking to him, he's  
7 got something in his hand, and he turns around, and he  
8 does something like that, according to Lance Okeson's  
9 testimony, and then all of a sudden Lance asks for Joe  
10 Glascock. And Joe Glascock comes up. And Joe follows  
11 this squelch. And comes to where Lance Okeson and  
12 Dwight Hammond are looking at each other. And Joe goes  
13 ahead and says how is it going, Dwight? And Dwight  
14 says, not so good. That will be the testimony.

15 At that point Lance is trying to get a law  
16 enforcement officer, but out in that country it's hard.  
17 And the air attack pilot now is hearing it, and he's  
18 trying to get a law enforcement officer. In fact, a guy  
19 named George Orr is trying to get there.

20 As he's trying to get a law enforcement  
21 officer, Lance Okeson will testify -- this part I'll  
22 tell you -- will testify that as Lance is trying to get  
23 the law enforcement officer, Dwight says, you don't need  
24 to be doing that. You're going to get a lot of people  
25 excited. Why don't you guys come on down to the ranch

1                   tonight?

2                   Okeson is having none of it. No. Okeson  
3                   doesn't know what to do with him. So he says to Mr.  
4                   Dwight Hammond, the defendant, I don't know what to do  
5                   with you. I guess I'm going to have to let you go. And  
6                   they leave and they walk back towards the ATV. And as  
7                   he walks back towards the ATV, something happens.

8                   The area where they left Dwight Hammond there  
9                   is a fire and it starts to go up 10, 12 feet. And the  
10                  air attack pilot says there is a fire behind you and a  
11                  fire in front of you. And the air attack pilot,  
12                  Mr. Bates, will say, get out of there. You are  
13                  surrounded by fire.

14                  Okeson, we anticipate the testimony will be,  
15                  gets a little hot headed, and takes basketball sized  
16                  boulders and he marks this area where there's a boot  
17                  print where he saw Mr. Dwight Hammond go across the  
18                  road. And when he gets that marked, he gets back on his  
19                  ATV, and he leaves where Joe Glascock goes the opposite  
20                  direction trying to find Mr. Dwight Hammond,  
21                  unsuccessfully.

22                  Joe Glascock then comes back. They go back up  
23                  the road. You are going to hear a lot about how the  
24                  firefighting suppression stuff took place. But the  
25                  bottom line at that point is Lance Okeson gives his

1 report.

2           That should be probably the end of it except  
3 the next -- the fire burns over, Sheriff Glerup shows up  
4 and they do a helicopter back to the area where Lance  
5 Okeson saw Mr. Hammond cross the road. And they take a  
6 photograph of that boot print on the ground surrounded  
7 by the basketball sized rocks, and they leave.

8           When they come back the next day, that  
9 basketball rocks had been kind of moved to the side and  
10 there was no boot print left. It's been brushed away.  
11 And there is tire marks on the ground. And they look  
12 like TRX tire marks. And you'll see the photographs.

13           And later we go ahead and take photographs of  
14 the blue pickup that smells like smoke. And we also do  
15 a search warrant for the ranch, but we don't find any  
16 boots that smell like smoke. No boots at all that smell  
17 like smoke, according to Sheriff Glerup.

18           So the next day, Joe Glascock who's been  
19 calling Steven Hammond asking about his dad, calls Steve  
20 Hammond in the morning saying how's Dwight? What's  
21 going on? After all, Joe Glascock is the range con.  
22 Steven Hammond answers him. Why don't you come -- you  
23 know, I'll bring you some cookies and waters or words to  
24 that effect. Joe says no. So let's meet at the  
25 Frenchglen Hotel.

1                   So they go down and meet at the Frenchglen  
2 Hotel, but there is also the sheriff and the LEO, law  
3 enforcement officer for the BLM, were out at Frenchglen  
4 also. As they get down to the Frenchglen Hotel, Joe  
5 goes inside and talks to Steve Hammond. I'm not going  
6 to go through the whole conversation because I've  
7 already talked about 45 minutes, almost 50. But we  
8 anticipate the words that Mr. Joe Glascock will testify  
9 to was that Steve Hammond told him this could get ugly  
10 and this could be a sticky situation. You know,  
11 management cycles through here all the time. And I know  
12 you want to be part of this community. If you want to  
13 stay here, you'll make this go away. If I go down, I'm  
14 taking you with me. You lighted those fires, not me.

15                  Mr. Glascock reports that. And then what  
16 happens after that is that we bring in a bunch of fire  
17 cause investigators, and they look at their ignitions,  
18 and you're going to hear all about how they go out there  
19 and find where these fires are. It's like Gary White,  
20 Carrie Bilbao, and John Bird. There is actually more,  
21 but we're only going to be calling three. We could call  
22 more. And they're going to talk about how these were  
23 incendiary set and how they stand in ground coordinates.

24                  And there were trail fires, they call some of  
25 them -- Lance Okeson did a little follow the path of

1 some boot prints, you know, and that's really what they  
2 are going to be talking about. But we'll have those  
3 experts talking about the loss damages in this case.  
4 And that will be the experts.

5           But something else happens. Something else  
6 happens. While we're investigating this 2006 fire after  
7 Lance Okeson gave his statement, Mr. Shrader decides to  
8 go talk to somebody up in Richland, Washington. And we  
9 anticipate the testimony will be is that Mr. Shrader  
10 went up to Richland, Washington, to talk to a person  
11 named Dusty Hammond, the grandson of Dwight, the nephew  
12 of Steven. 13-year-old boy back in 2001. Remember  
13 Mr. Choate? The case that went nowhere?

14           Dusty was living on the ranch. His parents  
15 were going through a divorce. He had a sister named  
16 Jacquie. Jacquie Hammond McDonald is her name. Jacquie  
17 went back with her mom. Dusty stayed out there. When  
18 he was 13 years old, about September 30th, he was going  
19 to go hunting that morning with his grandfather and his  
20 dad, Rusty Hammond, also with his cousin, Jacon Taylor,  
21 not a close cousin but apparently the relative of Steve  
22 Hammond's wife.

23           So Dusty got up that morning. And he will  
24 testify that he heard his grandfather and his uncle  
25 talking about how when there's hunters on the mountain,

1 we light up the mountain, we burn it.

2 They don't like hunters on the mountain. Dusty  
3 will testify to that. Dusty that particular morning  
4 that his grandfather got up in his Super Cub and flew  
5 over the area and came back and reported to the people  
6 at the breakfast table, pretty much to the effect that  
7 there is hunters on the mountain, but there is also a  
8 group of deer near the waterhole. So they all after  
9 breakfast went ahead and they got into various vehicles,  
10 including Susan Hammond driving a Lincoln, and they  
11 drove down to the Hammond cabin on the property on the  
12 Steens Loop Mountain Road.

13 And once there, and Dusty had been there  
14 before, once there, they got their guns, got into  
15 grandpa's pickup, Mr. Dwight Hammond's pickup, and went  
16 down and went to a place called the Old Gravel Pit or  
17 near it. And once they got there, they got out. And he  
18 will testify that his uncle Steven was wearing a white  
19 straw cowboy, and that his father was wearing kind of a  
20 baseball golf hat. And that he was wearing kind of like  
21 an Elmer Fudd hat with the ear things. And he couldn't  
22 remember what Jacon was wearing. But they went ahead  
23 and they started hunting four abreast going up Mudd  
24 Creek, excuse me, Fence Creek toward Big Fir, and they  
25 walked across this land.

1                   Jacon's stomach was pretty upset that morning.  
2       And they were making a joke about him. But they finally  
3       got to where they were supposed to meet up with Dwight  
4       Hammond at Rock Jack Gate. Well, when they got there,  
5       his grandfather was not there. And Dusty Hammond,  
6       13-year-old boy, was real thirsty. He needed some  
7       bottled water. He said that kind of bothered him, but  
8       his grandfather wasn't there, so they kept hunting four  
9       abreast along the fence line here. Jacon to his left.  
10      He was the next person. The dad, Rusty or Russell, was  
11      ahead and Steven was in the lead.

12                  And that when they went over a ridge, Steven  
13      was the first over the ridge and he heard shots. Then  
14      Russell, his father, went over the ridge. And Dusty  
15      thinks he heard more shots, not sure. He gets over the  
16      ridge, he's looking through his scope and he doesn't see  
17      anything. And then he remembers all four of them were  
18      over on top of the ridge.

19                  He was told by his father you should have been  
20      shooting but you weren't. And the father, Rusty, then  
21      goes and joins up with Steve. And after a while,  
22      Russell Hammond comes back. And the two of them then  
23      walk along the fence line across public land to a place  
24      called Rock Crib. It's not really a place. Rock Crib  
25      is nothing more than a bunch of rocks put together where

1 fences come into it.

2                 But then along the tributary of Mud Creek, and  
3 that's where he's at, and that's where he stands with  
4 his father until his uncle arrives, Dwight Hammond pulls  
5 up in a pickup, and Dusty goes to the pickup because  
6 he's thirsty. And he gets his bottle of water. And his  
7 father calls him over to where Steven and Dwight are  
8 standing. And Dwight starts handing out boxes of  
9 matches, matches, strike anywhere matches. And gives  
10 Dusty, this 13-year-old boy, matches and he says we're  
11 going to light up the whole country.

12                 And he's told then to go ahead and walk along  
13 the fence line, the BLM property here, right along the  
14 fence line, in the Mudd Creek area and to drop the  
15 matches. And he does that. Not very good at it. Not  
16 many fires start. But he looks back at his father,  
17 Russell, who's doing a pretty good job lighting  
18 cheatgrass. And after a while, they get a good fire  
19 going, he loses sight of his father. And all of a  
20 sudden, the fire is all around him because it's coming  
21 from this direction, too, from this -- coming from the  
22 west towards him in the east. So he kind of wanders  
23 down to Mud Creek a little ways. And he tries to get on  
24 a piece of rock and the fire burns by him.

25                 And then he makes a turn and he starts

1 following the fence line of an old cattle trail back to  
2 where they are supposed to meet up, because his uncle  
3 told him go in that direction until you get to the  
4 cattle guard.

5 Well, Dusty was the last one there. And it  
6 took him about an hour to get there. And as he's  
7 walking up Steens Mountain Loop Road, up comes his  
8 grandfather in the pickup, picks him up, they go back to  
9 the Hammond cabin. And he and the rest of the people,  
10 except for Steven Hammond, leave. And they go back to  
11 the ranch where he has himself his lunch. He remembers  
12 that, 13-year-old boy he remembers his lunch. It was  
13 lunchtime when they got back to the ranch.

14 What time -- about the same time the Nelsons  
15 got back to their ridge. The fire has been burning. At  
16 12 noon, Steve Hammond calls the BIC, Burns Interagency  
17 Communications Center, and he asks if it's okay -- is  
18 there a reason why a person can't be doing a controlled  
19 burn? And the little gal there, summer help, she  
20 says -- her name is Tammi Renfro. We anticipate her  
21 testimony will be that, no, in fact, we've got a  
22 controlled burn going on at V Lake now and they kind of  
23 laughed about it. So he makes the call about a  
24 controlled burn two hours after the fire has been  
25 burning on his property and going onto BLM property.

1 Same fire Gordon Choate said that caused him and his  
2 crew to leave. Dusty will be the witness.

3 Now, I've been talking longer than I told the  
4 court I would. But what our case boils down to, there's  
5 going to be a lot of expert testimony, and we anticipate  
6 the defense is going to put on experts that will say  
7 they were moving cattle, that they were just justified  
8 in doing this, and that's all good, and that's their  
9 job. Just as I'm trying to do mine. But this case for  
10 the government after you are here for a week or two or  
11 however long it takes, will you go through them, please,  
12 what it really boils down to, whether you are convinced  
13 beyond a reasonable doubt by the testimony of Gordon  
14 Choate, excuse me, the witnesses, Mr. Choate, please.

15 Now, Mr. Choate; and Dusty and Dusty Hammond;  
16 testimony of Joe Glascock; Mr. Dunten, the young man on  
17 the ridge; Mr. Chad Rott, the young man driving the  
18 engine; Lisa Megargee, she doesn't have a lot to offer  
19 but she's going to testify; and Lance Okeson. The one  
20 person you don't see is Dusty Hammond. He should  
21 testify today or tomorrow, probably tomorrow given the  
22 time.

23 We anticipate that this case when we're done --  
24 you cut it down and you go through the shank, the  
25 muscle, and you get to the bone, what you're going to

1 find and what this case is about, you will weigh those  
2 four witnesses, people who saw what they saw, heard what  
3 they heard, and testify in front of you folks here  
4 today.

5 I've taken a long time. I thank you for your  
6 patience. I know it's a complicated case.

7 THE COURT: Thank you. We'll take a ten-minute  
8 break.

9 (Recess: 1:46 p.m.)

10 (Further proceedings were had by Reporter  
11 Amanda LeGore, and are bound under separate cover.)

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## CERTIFICATE

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I, Deborah Wilhelm, Certified Shorthand Reporter  
for the State of Oregon, do hereby certify that I was  
present at and reported in machine shorthand the oral  
proceedings had in the above-entitled matter. I hereby  
certify that the foregoing is a true and correct  
transcript, to the best of my skill and ability, dated  
this 12th day of June, 2012.

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/s/ Deborah Wilhelm

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Deborah Wilhelm, RPR  
Certified Shorthand Reporter  
Certificate No. 00-0363

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